Supreme Court, U.S.
FILED

115

(1)

08-776 SEP 11 2008

Docket No. _____ OFFICE OF THE CLERK

SUPREME COURT of the UNITED STATES

Donald C. Marro

Petitioner

v.

GREGORY EARNHEART, NANCY EARNHEART, CANDICE BOWER and NRT MIDATLANTIC, INC. (dba COLDWELL BANKER RESIDENTIAL BROKERAGE)

Respondents

On Petition For Writ of Certiorari

from the Supreme Court of Virginia and

Rappahannock County (VA) Circuit Court

PETITION FOR WRIT OF CERTIORARI

Donald C. Marro, pro se
3318 Bust Head Road
The Plains, VA 20198
540-253-5309

QUESTIONS PRESENTED

1. Is due process denied by a trial court's opinion of Petitioner as vexatious in another unrelated matter when it adversely colored rulings herein.

2. Is Right To Petition denied when common law exemptions to a Statute of Frauds are withheld from a litigant deemed "vexatious".

3. Is Right To Contract denied when common law exemptions to a Statute of Frauds are withheld from a litigant deemed "vexatious".

4. Is Equal Protection denied when common law exemptions to a Statute of Frauds are withheld from a litigant deemed "vexatious".

5. Is due process denied when plaintiff cannot put on evidence and be heard on a Plea In Bar while defendants put on evidence, although on demurrer.

6. Is Code of Virginia 8.01-271.1, the sanctions statute, unconstitutionally vague.

JURISDICTIONAL BASIS

This Petition for Certiorari is brought under 28 USC 1257. Further, 28 USC 2403(b) may apply.

Petitioner contends that constitutional protections (set forth in questions presented and raised on petition for state appellate review) were denied.

The Virginia Supreme Court declined to review both a Rappahannock County Circuit Court order of December 21, 2006, dismissing the instant complaint, and a purported "final order" of November 5, 2007. Rehearing was denied on June 13, 2008.

OPINIONS BELOW

No official reports were of the opinions below. All opinions are in the Appendix.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED.....i

JURISDICTIONAL BASIS.....ii

OPINIONS BELOW.....ii

TABLE OF CONTENTS.....iii

TABLE OF AUTHORITIES.....iv

STATEMENT OF THE CASE.....1

CONSTITUTIONAL PROVISIONS AND STATUTES....7

ARGUMENT.....8

Summary.....8

Details.....9

CONCLUSION.....16

APPENDIX.....19

TABLE OF AUTHORITIES

Cases — Page

Barnes v. Township
927 F. Supp 874 (E.D. Pa 1996).....16

BE & K v. N.L.R.B.
122 S.Ct. 2390, 536 U.S. 516.....16

Blum v. Yaretsky
102 S.Ct. 2777, 457 U.S. 991.....9

Bluth v. Laird
435 F.2d 1065 (4th Cir. 1970).....15

Board of Regents v. Roth
92 S.Ct. 2701, 408 U.S. 564.....10

Bouie v. City of Columbia
84 S.Ct. 1697, 378 U.S. 347.....11

Bradley v. MD Casualty,
382 F.2d 415 (8th Cir 1967).....13

Brinkerhoff-Farris Trust v. Hill
50 S.Ct. 451, 281 U.S. 673.....12

Buchanan v. Warley
38 S.Ct. 16, 245 U.S. 60.....12

Carey v. Pop. Svcs.
97 S.Ct. 2010, 431 U.S. 678.....15

Cleveland Bd of Ed. v. LaFleur
94 S.Ct. 791, 414 U.S. 632.....13

TABLE OF AUTHORITIES
(cont'd)

Cases — Page

Collins v. Wolfson
498 F.2d 1100 (5th Cir 1974).....10

Comcast v. San Jose
286 F.Supp.2d 1241 (N.D. Cal 2003).....14

Dickie v. Sewer Imp. Dist
328 F.2d 296 (8th Cir 1964).....12

Drake v. Livesay
231 Va 117, 341 S.E.2d 186 (1986).....10

Giaccio v. State of PA
86 S.Ct. 518, 382 U.S. 399.....16

Havemeyer v. Iowa County
70 U.S. 294, 18 L.Ed. 38.....14

Hilliard v. Scully
537 F.Supp. 1084 (S.D.NY 1982).....11

Horner v. Holt
187 Va 715, 47 S.E.2d 365 (1948).....10

In re: Asbestos
829 F.2d 1233 (3rd Cir 1987).....12

Kenney v. Fox
132 F. Supp 305, (W.D. Mich 1955).....9

TABLE OF AUTHORITIES
(cont'd)

Cases — Page

Moose Lodge No. 107 v. Irvis
92 S.Ct. 1965, 407 U.S. 163.....9

Postal Telegraph v. Newport, KY
38 S.Ct. 566, 247 U.S. 464.....10

Reynolds v. Dixon
187 Va 101, 46 S.E.2d 6 (1948).....10

Robison v. Wichita Falls
507 F.2d 245 (5th Cir 1975).....10

Saunders v. Shaw
37 S.Ct. 638, 244 U.S. 317.....15

Troyer v. Troyer
231 Va 90, 341 S.E.2d 182 (1986).....10

Twin City v. Harding Glass
51 S.Ct. 476, 283 U.S. 353.....13

Williams v. Tooke
108 F.2d 758 (5th Cir 1940).....10

Zannino v. Arnold
531 F.2d 687 (3rd Cir 1976).....14

STATEMENT OF THE CASE

The context here was set in an earlier, unrelated matter, Marro v. Virginia Power (certiorari petition no. 07-1340), in which Petitioner was labelled "vexatious".

The matter here alleged oral contract, breach thereof and of a consumer protection statute, fraud, tortious interference and broker malpractice. The Earnheart defendants Answered, filed a Plea In Bar and Demurrer, and a sanctions motion of 1 line.

The Earnhearts' Plea In Bar relied on the Statute of Frauds. Their Demurrer did also but went outside the complaint to claim the writing alleged to memorialize the oral contract was instead a "counter-offer".

Ms. Bower and NRT/Coldwell Banker (the "Realtor Defendants") demurred only.

Marro set the Plea and Demurrers to be heard on 7/21/06. The Earnhearts objected to a hearing of their Plea.

The trial court then declined to hear the Plea, keeping Marro from using witnesses he had called to give evidence of oral contract formation and of the purpose of the writing memorializing the oral contract.

The trial court instead heard Demurrers, and it sustained them, ruling the Statute of Frauds applied as no removing writing was attached, purchase required by the Earnhearts of extra land or payment of a higher price is not fraud absent "bait and switch", no valid contract or expectancy was pleaded nor any duty shown from realtors to plaintiff, and therefore the economic loss rule precluded malpractice.

Plaintiff timely filed a First Amended Complaint ("FAC"), pleaded "bait and switch" and attached the writing alleged as agreed by the parties to memorialize the oral contract.

The Earnhearts again filed a Plea In Bar, asserting again the Statute of Frauds.

In their Plea, the Earnhearts said the writing alleged by the FAC to memorialize the oral contract was instead a "counter-offer". All defendants also demurred, each calling the writing a "counter-offer". The Earnhearts also argued (demurrer at 19, 20):

"19. A writing, to satisfy the statute of frauds, must contain the essential terms of the sale or agreement. In this instance, it would be virtually impossible to orally agree to all the material conditions and terms contained in the writing. This, however, is only the tip of the iceberg.

20. The iceberg, in its entirety, is this: The writing submitted by Marro shows, on its face, that there was no mutual assent. The writing, ***as modified by the Earnhearts***, sets forth ***an express contingency*** as to the quantity of land to be purchased and the amount to be paid for the property. The writing flies in the face of Marro's case and the facts he has pled regarding his "oral agreement"." (emphasis supplied)

The Earnhearts admit an "express contingency" was added to a previously agreed quantity of land and to its price. Why? Because Mrs. Earnheart purportedly was not included in Mr. Earnheart's assent, though the complaint plainly alleged otherwise.

The Earnhearts' Demurrer went outside the FAC on three other occasions by stating:

1) that "plaintiff ***contemporaneous with his oral offer*** stated he might also make an offer for the residual 26 acre parcel." (the "Land Offer")

2) "The parties agreed that Marro would prepare a contract for the 40 acre parcel and submit the same to the Earnhearts and/or their agent ***for review***."

3) "The Earnhearts returned the contract prepared by Marro with several handwritten changes ***to the draft***. Each handwritten change was initialed by Mr. and Mrs. Earnheart, who apparently chose to act on her own behalf in ***submitting a counter-offer rather than acting through her putative agent***. "
(all the foregoing emphasis was supplied)

The FAC (as the Earnhearts noted) alleged Mr. Earnheart's agency but nowhere described the Land Offer as contemporaneous, or the memorializing writing to be for original "review" as a "draft".

The trial court again declined to hear the Plea but heard Demurrers, ruling *inter alia* the writing was a "counter-offer" done "simultaneously" that did not remove from the Statute of Frauds.

The trial court ruled on 10/05/06. [1] The ruling did not address the Earnhearts' sanctions motion, the only one then pending.

The Earnhearts' were asked to prepare an order, then gave themselves leave to amend their sanctions motion and other defendants leave to seek sanctions.

The court extended jurisdiction it had already lost pursuant to VA Rule 1:1, and in its dismissal order granted the leave defendants awarded themselves.

Contending the 12/21 dismissal order was final, Marro Petitioned For Appeal. Defendants moved to dismiss on grounds of no final order. The Petition was dismissed without prejudice.

---

[1] The ruling accepted "federal pre-emption" of Virginia's consumer protection statute, concluded the Earnheart ads show willingness to sell (without addressing the "bait and switch" allegation) and, as to the realtor defendants, held the FAC "never showed an accepted offer", that "advising" a client was not tortious interference, and that no duty was shown for broker malpractice.

Marro moved to recuse the trial judge on grounds his "vexatious" characterization earlier was adversely coloring rulings here, and because of the excessive deference to counsel. Recusal was denied.

On 6/22/07, more than 8 1/2 months after dismissing the FAC, the trial court issued its opinion, not only on sanctions but on the entirety of a case over which jurisdiction had been lost 8 months before.

On 11/5/07, 13 months after dismissing the FAC, and 8 months longer than a complaint was before the court, a purported final order issued with sanctions of $24,000, including for the first Petition For Appeal.

A second Petition For Appeal followed timely, was denied, rehearing was sought, and was denied.

Constitutional Provisions and Statutes

Constitutional Provisions
Art. I, sec. 10, Clause 1 (Right to Contract) "or Law impairing Obligation of Contracts"

Amendment I (Right to Petition) "or the right of the people to petition.. for a redress of grievances"

Amendment XIV (Procedural and Substantive Due Process and Equal Protection) "No State shall make or enforce any law [to]abridge privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction of the equal protection of the laws.

Virginia Statutes: 8.01-271.1: Every pleading shall be signed...[which] constitutes a certificate that (ii) to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

If a pleading..is..in violation of this rule, the court shall impose..appropriate sanction ..including a reasonable attorney's fee.

VA Supreme Court Rule 1:1
All final judgments, orders and decrees.. shall remain under the control of the trial court..for 21 days after the date of entry, and no longer.

Argument

1. The action herein is a state action.

2. Due process is denied when a trial court characterization of Petitioner as vexatious in an earlier, unrelated matter was neither afforded a rebuttal opportunity then or here, and adversely colored the rulings then and here.

3. Common law protection from the Statute of Frauds was denied Petitioner.

4. Withholding common law protections denies Right to Petition.

5. Common law and statutory protections were withheld or misapplied because the trial court was biased and overly deferential to the bar.

6. The Right To Contract is denied when Statute of Frauds exemptions are withheld improperly.

7. Equal Protection is denied when common law exemptions to the Statute of Frauds are withheld from a *pro se* litigant.

8. Due process is denied if Petitioner was kept from putting on evidence and being heard on a Plea In Bar while Respondents were permitted to put on evidence even though on demurrer.

9. Virginia Code 8.01-271.1, the sanctions statute, is unconstitutionally vague.

1. **The action herein is a state action.**

The action herein is a state action.

"Action of state judges and state courts is state action", *Kenney v. Fox*, 132 F.Supp 305, (W.D. Mich 1955) State action "when exercised coercive power", *Blum v. Yaretsky*, 102 S.Ct. 2777, 457 U.S. 991

"A case between private parties decided arbitrarily and capriciously in violation of federal principles violates XIV Amendment", *Moose Lodge No. 107 v. Irvis*, 92 S.Ct. 1965, 407 U.S. 163

2. **Due process is denied when a trial court characterization of Petitioner as vexatious in an earlier, unrelated matter was neither afforded a rebuttal opportunity then or here, and adversely colored the rulings in both.**

The trial court earlier labeled Marro vexatious, and let defendants use this to justify sanctions. Marro offered evidence rebutting that characterization in the prior matter and here but was not heard in either.

Judicial decisions may not be arbitrary or capricious. *Williams v. Tooke*, 108 F.2d 758 (5th Cir 1940), citing *Postal Telegraph v. Newport, KY*, 38 S.Ct. 566, 247 U.S. 464

Proceedings are biased if a trial judge shows partiality from an earlier unfavorable impression. *Robison v. Wichita Falls*, 507 F.2d 245 (5th Cir 1975)

Further, government labelling with a badge of disgrace constitutes a liberty deprivation. *Collins v. Wolfson*, 498 F.2d 1100 (5th Cir 1974), citing *Board of Regents v. Roth*, 92 S.Ct. 2701, 408 U.S. 564

3. **Common law protection from the Statute of Frauds was denied Petitioner.**

The "writing" here satisfied removal and squarely fell within the context of how such writings arise. [2]

---

[2] Drake v. Livesay, 231 Va 117, 341 S.E.2d 186 (1986); Reynolds v. Dixon, 187 Va 101, 46 S.E.2d 6 (1948); Horner v. Holt, 187 Va 715, 47 S.E.2d 365 (1948); and Troyer v. Troyer, 231 Va 90, 341 S.E.2d 182 (1986) [need not embody contract, just essential terms]

Marro cited appropriate common law but was denied removal by a judge who refused a description of the writing in the pleadings, and took no evidence from Marro though Marro had set the Plea and called witnesses. The judge instead accepted defendants' evidence of the writing as a "counter-offer".

4. **Withholding common law protections denies the right to petition.**

When the common law controlling removal from a Statute of Frauds is ignored, the state has improperly infringed upon or burdened access. [effective access includes whatever is required for a fair hearing of grievances, *Hilliard v. Scully*, 537 F.Supp. 1084 (S.D.NY 1982)

Even if the trial court only misapplied common law, its error was still deprivation by being so unforeseeable as to deny fair warning. *Bouie v. City of Columbia*, 84 S.Ct. 1697, 378 U.S. 347

"Construction of state common law is of federal concern when the state action denies recognition to and vindication of plainly vested legal rights". *Dickie v. Sewer Imp. Dist*, 328 F.2d 296 (8th Cir 1964)[3]

"Common law is within equal protection". *In re: Asbestos*, 829 F.2d 1233 (3rd Cir 1987) Moreover, the "right to acquire property is a property right". *Buchanan v. Warley*, 38 S.Ct. 16, 245 U.S. 60

5. **Common law and statutory protections were withheld or ignored because the trial court was biased and overly deferential to the bar.**

A trial court seeing a vexatiousness litigant without allowing opportunity for rebuttal is biased but this judge also wanted "finality" for a matter pending but a few months, accepted counsel's argument uncritically and entered their orders verbatim.

---

[3] state courts must accord parties due process in determining adjective and substantive law of state, Brinkerhoff-Farris Trust v. Hill, 50 S.Ct. 451, 281 U.S. 673

The XIV Amendment is there to protect against such overbearing concern for efficiency and efficacy. *Cleveland B. of Ed. v. LaFleur*, 94 S.Ct. 791, 414 U.S. 632

Also, due process is denied when a party's order grants leave on matters not previously ruled on, and jurisdiction is deferentially extended to accomodate. *Bradley v. MD Casualty*, 382 F.2d 415 (8th Cir 1967) [4]

Uncritical acceptance of pre-emption of the Consumer Protection statute when the federal statute was shown to do no such thing illustrates this further.

6. **The Right To Contract is denied when Statute of Frauds exemptions are withheld improperly**.

"Competent persons shall have the utmost liberty of contracting, and agreements voluntarily and fairly made shall be held valid and enforced." *Twin City v. Harding Glass*, 51 S.Ct. 476, 283 U.S. 353

---

[4] Statement of the Case on 10/05/06 rulings, leave to amend and move for sanctions

The pleading stated facts showing formation of a valid oral contract, and Marro had witnesses to testify thereto in the hearing he set for the Plea In Bar.

"If contract when made was valid, subsequent judicial action cannot impair its obligations". *Havemeyer v. Iowa County*, 70 U.S. 294, 18 L.Ed. 38

7. **Equal protection is denied when common law exemptions to the Statute of Frauds are withheld from a pro se litigant.**

Common law exemptions from a Statute of Frauds were withheld from Marro. Marro alleged a memorializing document removing the oral contract from the Statute of Frauds, and had witnesses thereto. The trial judge took defendants' evidence instead (on demurrer) of the writing as a "counter-offer".

XIV Amendment protects from arbitrary official action. *Zannino v. Arnold*, 531 F.2d 687 (3rd Cir 1976); *Comcast v. S. Jose*, 286 F.Supp.2d 1241 (ND Cal 2003)

Borrowing from *Carey v. Pop. Svcs.*, 97 S.Ct. 2010, 431 U.S. 678, "when state burdens exercise of fundamental right, justification must be more than an unsupported assertion".

8. **Due process is denied if Petitioner was kept from putting on evidence and being heard on a Plea In Bar while Respondents were permitted to put on evidence even though on demurrer.**

A writing alleged as agreed by the parties to memorialize an oral contract and set forth all its material terms removes an oral contract as a matter of law. If questions remained, then Marro should have been allowed to put on evidence of oral contract formation and/or of the writing. He wasn't.

A case decided in a way that denies a proper opportunity to present evidence denies due process. *Saunders v. Shaw*, 37 S.Ct. 638, 244 U.S. 317; also, *Bluth v. Laird*, (4th Cir. 1970) 435 F.2d 1065 [sovereign sets procedure then deviates, violates procedural process]

9. **Virginia Code 8.01-271.1, the sanctions statute, is unconstitutionally vague**.

A right to petition isn't conditioned on motive, *Barnes v. Township*, 927 F. Supp 874 (E.D. Pa 1996), so even a vexatious Marro might ask court enforcement.

The writing was alleged to satisfy removal from the Statute of Frauds, and so long as no testimony was taken demonstrating otherwise, a "sham" exception to the right to petition does not apply. *BE & K v. N.L.R.B.*, 122 S.Ct. 2390, 536 U.S. 516

The sanctions statute is vague since it leaves judges free to decide without (or as here, ignore) legally fixed standards of what is prohibited and what isn't. *Giaccio v. State of PA*, 86 S.Ct. 518, 382 U.S. 399

Conclusion

The issues in this case are simple: was there an oral contract; was the writing agreed to memorialize it; did the Earnhearts improperly alter the writing; why.

To find out, due process provides for and requires taking evidence, at trial, at a hearing of the Plea In Bar or by deposition. None of this happened.

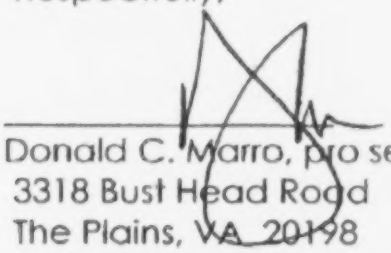
Instead, a "vexatious" pro se was found on demurrer to have failed "Contracts 101", in the words of the Earnhearts' counsel and the trial court. On demurrer, not because of the common law on removal from the Statute of Frauds but from evidence from defendants contrary to complaint allegations.

Constitutional protection is meaningless when a trial court is unfavorably disposed to a litigant, too anxious for "finality" to be detached, and unlikely to be reviewed when Petitioner is pro se and "vexatious".

Consequently, there was no meaningful access to the courts in these circumstances, no sanctity of contract, no equal protection, and no due process.

And so, for all the foregoing, granting this Petition is amply appropriate.

Respectfully,



September 8, 2008

Donald C. Marro, pro se
3318 Bust Head Road
The Plains, VA 20198
(tel) 540-253-5309
(fax) 540-253-5607
dmarro@crosslink.net

APPENDIX

Page

1. First Amended Complaint.....20

2. 10/05/06 Hearing Order.....52

3. 12/21/06 Sanctions Order.....54

4. Defendants' Proposed Order.....56
(Granting themselves Leave For Sanctions, and Having Effect of Extending Jurisdiction)

5. Transcript Excerpts From Above.....58
(pages 45-50, ruling)

6. Motion To Recuse.....64

7. 06/22/07 Opinion.....66

8. 11/05/07 Final Order.....81

9. 11/05/07 Opinion.....83

10. 01/08/07 "Vexatious" Opinion.....85
(unrelated matter)

11. Order Denying First Petition.....90

12. Order Denying Second Petition.....91

13. Order Denying Rehearing.....92

VIRGINIA:
IN THE CIRCUIT COURT OF RAPPAHANNOCK COUNTY

DONALD C. MARRO	)
PLAINTIFF	)
	) CL06-029
V.	)
	)
GREGORY EARNHEART, NANCY EARNHEART	)
CANDICE BOWER and NRT MIDATLANTIC,	)
dba COLDWELL BANKER RES. BROKERAGE	)
DEFENDANTS	)

FIRST AMENDED COMPLAINT

Plaintiff, Donald C. Marro ("Marro"), pro se, complains against GREGORY EARNHEART, NANCY EARNHEART (together, the "Earnheart Defendants"), CANDICE BOWER ("Bower") and NRT MIDATLANTIC, dba COLDWELL BANKER RESIDENTIAL BROKERAGE ("CBRB"), as follows.

NATURE OF ACTION

1. This action is for contract breach, violation of 59.1-200, actual or constructive fraud, tortious interference and broker malpractice, arising from ads to sell two separate properties, and an offer by plaintiff to buy one of these properties. Plaintiff's offer was accepted by Mr. Earnheart for both Earnheart defendants.

THE PARTIES

2. Mr. Marro resides at 3318 Bust Head Rd., The Plains, VA. Allegations herein made by Mr. Marro on information and belief are likely to have evidentiary support after reasonable discovery.

3. Mr. Earnheart is or was a resident of the Property.

4. Mrs. Earnheart is or was a resident of the Property.

5. Ms. Bower is listing agent for the Property.

6. CBRB is the brokerage firm for the Property.

JURISDICTION AND VENUE

7. This Court has jurisdiction of this case pursuant to Code of Virginia Section 8.01 – 328 et seq..

8. Venue is proper in this district pursuant to Code of Virginia 8.01 – 262 (3), (4) and (9).

FACTUAL BACKGROUND

9. Defendants placed ads offering two separate properties for sale. The first property was a house/guest house and 40 acres at 332 Hunters Rd, Washington, VA, offered at $2.5 million ("Property"). The second property was the first property but on 66 acres for $2.95 million (the "Second Property"). Ads are attached.

10. On or about 3/26/06, Mr. Marro, his wife and their real estate agent met Mr. Earnheart and Ms. Bower, the Earnhearts' real estate agent, at the Property.

11. Ms. Bower said the Property was to be sold as advertised with the Second Property sold as land only if the Property sold first. Ms. Bower said the Earnhearts would not sell the land only before selling the Property.*1 Mr. Earnheart confirmed Ms. Bower's representations.

12. Mr. Marro and his wife wished to see the Property again, so asked their agent to arrange another viewing. Because of month-end closings, Ms. Bower was unavailable but arranged for Mr. Marro, his wife and their agent to meet Mr. Earnheart at the Property.

13. Accordingly, on 3/30/06, Mr. Marro, his wife and their real estate agent met with Mr. Earnheart and made a verbal offer to him on behalf of both Earnheart defendants to buy the Property for $2.25 million (the "Offer"), to close on or before 5/31/06.

14. Mr. Earnheart accepted the Offer.

15. As noted, 26 acres of adjoining land was the only difference between the Property and the Second Property.

---

1. This land was not advertised at times relevant hereto.

16. This land was not included in the Offer, but was of interest to Mr. Marro after he was told by Ms. Bower of the possibility of its separate purchase. Mr. Marro told Mr. Earnheart of his interest and said he might make a separate offer for the land (the "Land Offer") for evaluation and a consideration independent of the Offer. Pursuant to Ms. Bower's representation, the Land Offer would be separate and separately considered, and would either succeed or fail on its own.

17. Mr. Earnheart consented to receive such a Land Offer, endorsed this "retreat to formality" as he called it, and agreed to separate documents for the accepted Offer and putative Land Offer (if one was to be forthcoming). Later that day, Mr. Marro sent both documents to Ms. Bower.

18. The Earnhearts accepted the Offer in writing*2 but tried to switch Mr. Marro to the Second Property, requiring that the extra land be purchased as the Second Property. The Earnhearts now agreed to the Property purchase at $2.25 million only if it were subsumed in a total price of $2.85 million for the Second Property.

19. Mr. Marro already sold his home, thus was obliged to purchase a replacement residence. Mr. Marro was forced to purchase a different property when the Earnhearts did not honor the Offer.*3

---

2. Neither the Earnhearts' nor CBRB Furnished these documents to support the Earnhearts' plea in bar or the CBRB subpoena duces tecum. They are attached for the Court.

20. This action followed.

COUNT I
BREACH OF CONTRACT

21. Plaintiff incorporates the preceding paragraphs.

22. An oral contract was formed between plaintiff and the Earnheart defendants as to the Property.

23. The terms and conditions thereof were certain, providing that the Earnheart defendants would sell the Property to Marro for an agreed price of $2.25 million on or before 5/31/06.

24. Plaintiff performed all terms, covenants and promises in the contract except those excused by the Earnheart defendants failures to perform.

WHEREFORE, plaintiff seeks judgment against the Earnheart defendants for damages of $95,000, interest from 03/31/06, and costs of suit.

---

3. As to the Land Offer, Mr. Marro initially offered $400,000 then proposed to split the difference of $50,000 on the value calculated for the extra land (i.e., the difference between the advertised price of $2.5 million for the Property and $2.950 million for the Second Property) when he at first received no response.

COUNT II
59.1-200 VIOLATION

25. Plaintiff incorporates the preceding paragraphs.

26. Defendants had no intention to sell the Land separately as represented.

WHEREFORE, plaintiff seeks judgment against the Earnheart defendants for $95,000 in damages, interest and costs of suit.

COUNT III
ACTUAL FRAUD

27. Plaintiff incorporates the preceding paragraphs.

28. The Earnheart defendants knowingly and intentionally advertised or caused to be advertised the Property when they had no intention to sell the Property as it was advertised. The Property was offered to induce an interested party to contract therefore, whereupon that party would be required to buy the Second Property.

29. The Earnheart defendants misrepresented that extra land was not required to be purchased to purchase the Property.

30. Both the advertisement and the representation as to the extra land were material to Mr. Marro's decision to purchase. Mr. Marro relied on both to his detriment, was deprived of possession of the Property, and had to buy another property with less land and at greater cost.

WHEREFORE, plaintiff seeks judgment against the Earnheart defendants for $95,000 in damages, punitive damages of $100,000, interest and costs of suit.

COUNT IV
CONSTRUCTIVE FRAUD

31. Plaintiff incorporates the preceding paragraphs.

32. The Count is pled in the alternative in the event the Earnheart defendants made the misrepresentations aforesaid either innocently or negligently.

WHEREFORE, plaintiff seeks judgment against the Earnheart defendants for $95,000 in damages, punitive damages of $100,000, interest and costs of suit.

COUNT V
TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACT

33. Plaintiff incorporates the preceding paragraphs.

34. Ms. Bower and CBRB (the "Realtor Defendants") knew of the oral contract between Mr. Marro and the Earnhearts.

35. On information and belief, the Realtor Defendants knowingly and maliciously advised the Earnheart Defendants to dishonor the accepted Offer, in the expectation that Mr. Marro would increase the price he was willing to pay or by invoking the statue of frauds in the unlikely event of suit.

WHEREFORE, plaintiff seeks costs of suit, $95,000 in damages, $100,000 punitive damages and interest against Realtor Defendants.

COUNT VI
BROKER MALPRACTICE

36. Plaintiff incorporates the preceding paragraphs.

37. The Realtor Defendants have a statutory duty of care to Mr. Marro, and breached that duty.

38. The Realtor Defendants knowingly and maliciously advised and/or conspired with the Earnheart Defendants to advertise the Property as separately available from the Second Property, knowing the Earnheart Defendants would never sell the Property separately.

WHEREFORE, plaintiff seeks costs of suit, $90,000 in damages, $100,000 punitive damages and interest against Realtor Defendants.

FOR ALL THE FOREGOING, plaintiff prays damages of $345,000, punitive damages of $100,000 each for the Earnheart Defendants and the Realtor Defendants, interest and costs of suit.

Respectfully submitted,

Dated: August 11, 2006 by: (signed)

Donald C. Marro, pro se
3318 Bust Head Road
The Plains, VA 20198
540-253-5309 (tel)
540-253-5607 (fax)

List of Exhibits

1. Advertisements

Advertisements from the multiple listing service for the Property and the Second Property

2. The Written Earnheart contract Acceptance

The written contract signed by the Earnhearts and sent by CBRB to Mr. Marro's realtor and then to Mr. Marro in which the Earnhearts note their acceptance of the Offer is switched to a requirement for Mr. Marro to buy the Second Property instead.

This document was signed by the Earnhearts and sent to CBRB, who then sent it to Mr. Marro via his real estate agent. CBRB denies having this document in its response to the subpoena duces tecum issued by this Court in conjunction with the plea in bar of the state of frauds.

3. Subpoena duces tecum and CBRB responses.

Metropolitan Regional Information Systems, Inc

332 HUNTERS RD WASHINGTON, VA 22747

Status: ACTIVE
List Price: **$2,500,000**
Ownership: Fee Simple - Sale
BR/FB/HB: 4/3/1
Lot AC/SF: **40.68/1,772,021.00**
LvlsFpls: 3/2 LARGE
Tot. Fin. SF:
Year Built: 1994 PHOTO
Total Tax:
Tax Yr: 2005 HERE
Ground Rent:
Style: Contemporary
Type: Detached

boilerplate eliminated

Listing Co.: Coldwell Banker
Listing Agent: Candace Bower
Office: 703-771-8888

Metropolitan Regional Information Systems, Inc

332 HUNTERS RD WASHINGTON, VA 22747

Status: ACTIVE
List Price: **$2,950,000**
Ownership: Fee Simple - Sale
BR/FB/HB: 4/3/1 SAME
Lot AC/SF: **67.00/2,918,520.00**
LvlsFpls: 3/2 LARGE
Tot. Fin. SF:
Year Built: 1994 PHOTO
Total Tax: $15279
Tax Yr: 2004 HERE
Ground Rent:
Style: Contemporary
Type: Detached

boilerplate eliminated

Listing Co.: Coldwell Banker
Listing Agent: Candace Bower
Office: 703-771-8888

VIRGINIA:
IN THE CIRCUIT COURT OF RAPPAHANNOCK COUNTY

DONALD C. MARRO	)
PLAINTIFF	)
	)
V.	)
	)
GREGORY EARNHEART ET AL	)
DEFENDANTS	)

TO: CLERK OF THE COURT

Plaintiff Donald C. Marro, pro se, requests the Clerk prepare and issue a subpoena duces tecum:

Serve: Custodian of Records, Coldwell Banker
545 A East Market St., Leesburg, VA 20176

Materials: Documents prepared for sale of Gregory and Nancy Earnheart property and land, including all advertising therefore, purchase contracts, memoranda and other writings, and transcripts of e-mails.

Produce: By 7/17/06
Rappahannock County Circuit Court
210 Gay Street, Washington, VA 22747

Dated: June 21, 2006 by: (signed)
Donald C. Marro
2082 Winchester Road
Delaplane, VA 20144
tel: 540 592-3386
fax: 540-592-3475

SAUL
EWING
Attorneys at Law

Robert C. Gill
Phone: (202) 295-6505
Fax: (202) 295-6705
rgill@saul.com
www.saul.com

Mr. Gill
If this is for the subpoena duces tecum, it is incomplete. Where is the offer and memorandum of acceptance? Shall I move to compel or will you furnish?
(signed) Donald Marro 8/2/06
Handwritten by Marro

July 27, 2006

Mr. Donald C. Marro
3318 Bust Head Road
The Plains, VA 20198

Re: Marro v. Earnheart, et al.; Law No. 2005-4587 (sic)

Dear Mr. Marro,

Enclosed please find documents responsive to your subpoena to Coldwell Banker.

Very Truly Yours,

(signed)
Robert C. Gill

CC: Douglas K. Baumgardner, Esq.

SAUL
EWING
Attorneys at Law

Robert C. Gill
Phone: (202) 295-6505
Fax: (202) 295-6705
rgill@saul.com
www.saul.com

August 8, 2006

BY FACSIMILE
Mr. Donald C. Marro
3318 Bust Head Road
The Plains, Virginia 20198

Re: Marro v. Earnheart, et al.:Law No. 2005-4587 (sic)

Dear Mr. Marro:

This is in response to your note handwritten at the top of my letter to you dated July 27, 2006, wherein I enclosed documents responsive to your subpoena to Coldwell Banker.

Your statement that the documents were incomplete is not correct. We have produced all documents responsive to your subpoena, and have withheld nothing. We have nothing else to produce. I have never seen a "memorandum of acceptance" that you refer to. If it was produced by you or your agent, I suggest that you ask her for a copy. I would appreciate a copy if you locate one.

Very truly yours,
(signed)
Robert C. Gill

CC: Douglas K. Baumgardner, Esq.

CERTIFICATE OF SERVICE

I certify that plaintiff's First Amended Complaint was faxed to the respective counsels for each party defendant on August 11, 2006.

DATED: 08/11/06 by: (signed)

Donald C. Marro
3318 Bust Head Road
The Plains, VA 20198
540-253-5309

Thomas and Talbot Real Estate
Middleburg, Virginia

RESIDENTIAL CONTRACT OF PURCHASE

This CONTRACT OF PURCHASE made as of ***April*** 1, 2006, between Gregory S. Earnheart and Nancy R. Earnheart whose address is: PO Box 282 Washington, VA 22747 (the "Seller", whether one or more), and Donald C. Marro and Lillian S. Clancy, as Tenants by the Entirety whose address is: 2082 Winchester Road, Delaplane, VA (the "Purchaser", whether one or more), provides: The Listing Broker for the Property below is Coldwell Banker Residential Brokerage and the Selling Broker is Thomas & Talbot Real Estate. **(changed by Earnheart, initialed by Earnhearts only)**

1. REAL PROPERTY: Purchaser agrees to buy and Seller agrees to sell the land, and all improvements and appurtenances and fixtures (except as may be otherwise excluded in writing or in the listing) thereon located in the County of Rappahannock, Virginia and described as (legal description): 40.681 acres, more or less. Tax Map#29-70 More commonly known as: 332 Hunters Road, Washington, VA together with the items of personal property described in paragraph 2 (collectively the "Property").

2. PERSONAL PROPERTY INCLUDED: The following items of non-fixtures/personal property are included in this sale: all appliances in both the main house and the guest (if present on the date of this Contract) All items on attached MLS# PV3349155

(this Page 1 of the Contract continues next page)

3. PURCHASE PRICE: The Purchase Price of the Property is ($2,250,000) Two Million Two Hundred Fifty Thousand Dollars, which shall be paid to Seller at settlement in cash or by cashier's check subject to the prorations described herein and/or from the following proceeds of a prior sale.
PRICE SUBJECT TO CONTINGENCY 3(A) BELOW.
Handwritten addition by Earnheart
Initialed by the Earnhearts only.

3(A) purchase price $2,250,000 is contingent upon full price offer and simultaneous settlement of adjacent land parcel (tax map #29-71C in Washington, Virginia. Total sales price of both this and adjacent parcel will be $2,850,000 (two million, eight hundred, fifty thousand dollars), or price of house and 40.681 acres reverts to listing price of $2,500,000.00 (two million, five hundred thousand dollars)
Handwritten addition by Earnheart
Initialed by the Earnhearts only.

(a) PURCHASER'S REPRESENTATION AND WARRANTY: As specified in a written contingency, this Contract is dependent or contingent on the sale or settlement or lease of other real property. See addendum.....

4. DEPOSIT: (a) Purchaser has made a Deposit with Thomas and Talbot Real Estate (the "escrow Agent") of Twenty Thousand Dollars ($ 20,000) (the "Deposit") ___ in cash, X by check, ___bank letter or credit, or ___ by a note due and payable on _____ receipt of which is hereby acknowledged...**(boilerplate eliminated)**

(this ends Page 1 of the Contract)

INITIALS DM LSC GE NRE (signed)

5. SETTLEMENT; POSSESSION: Purchaser shall engage a settlement attorney within 5 days of ratification hereof. Settlement shall be made at the offices of To Be Determined on or before May 31, 2006 or within **90** days of ratification. Possession of the Property shall be given at settlement, free and clear of all tenancies unless otherwise agreed in writing by the Parties. Seller will permit Purchaser at Purchaser's experse to install wire and board fencing no less than 15 days prior to closing. Purchaser will remove all such materials if for any reason this sale does not close.
(handwritten addition by Earnheart)
initialed by Earnhearts only

6. BROKERAGE FEE: Seller and other parties hereto authorize and direct the settlement agent to disburse to Listing Broker and/or Selling Broker from settlement proceeds their respective portions of the brokerage fee payable....**(boilerplate eliminated)**

7. PROPERTY OWNER'S ASSOCIATION DISCLOSURE: Seller represents the Property is ___ is not X located within a development which is subject to the Virginia Property Owner's Association Act (Section 55-508 through 55-516....**(boilerplate eliminated)**

PARAGRAPHS 8 AND 9 ARE OMITTED AND ARE NOT PART OF THIS AGREEMENT.
(handwritten addition by Earnheart)
initialed by Earnhearts only

INITIALS DM LSC GE NRE (signed)

10. **ACKNOWLEDGEMENT OF DISCLOURE OF BROKERAGE RELATIONSHIP**
(Check as applicable.)
A. ___ The parties confirm.....
B. **X** The Parties confirm that in connection with the transaction contemplated by this Contract, Coldwell Banker Residential Brokerage the Listing Broker and its salespersons have acted on behalf of Seller as Seller's representative, and Thomas & Talbot, the Purchaser's Broker and its salespersons, have acted on behalf of Purchaser as Purchaser's representative.
C. **X** The Parties also confirm, with respect to their own representation, that any required disclosure of the brokerage relationships described above was made in writing at the time specific real estate assistance was provided by the brokers named above.....
D. ___ The Listing Broker and its salespersons.....
E. ___The principal or supervising broker.....
F. __ The parties confirm disclosure and consent.....
G. The duties of real estate licensees are set forth in Section 54.1-2130 et seq. of the Code of Virginia and in the Regulations of the Virginia Real Estate Board....
(boilerplate eliminated)

11. **EXPENSE PRORATIONS**: Seller agrees to pay for preparing the deed and any releases and grantor's recordation tax. Except as otherwise agreed herein, all other expenses of Purchaser in connection with Purchase.....shall be borne by Purchaser.....
(boilerplate eliminated)

LIQUID PETROLEUM GAS REMAINING IN BOTH TANKS
(handwritten by Earnheart)
initialed by the Earnhearts only

Initials: *DM LSC GE RE)*
(signed)

12. **TITLE:** ***PURCHASER SHALL OBTAIN A TITLE REPORT FOR*** **(handwritten by Earnheart)** the property dated no more than 10 days prior to the date of ratification. At settlement Seller shall convey the Property to the Purchaser by a general warranty deed containing..... ..... If a title examination reveals a title defect..... Seller, at its expense, ***and with sole discretion may or may not*** **(Earnheart addition, sic)** take such action as is necessary to cure such defect. If the defect is not cured in 30 days after Seller receives notice of the defect, then Purchaser shall have the right to (i) terminate this Contract, in which event the Deposit shall be returned to Purchaser, and Purchaser and Seller shall have no further obligations hereunder, or (ii) waive the defect and proceed to settlement with an adjustment to Purchase Price.....
initialed by the Earnhearts only; boilerplate eliminated

13. **LAND USE ASSESSMENT: (Earnheart deletion)** ***The*** Property is taxed under land use assessment and ***if*** this sale results in disqualification from land use eligibility, ***Purchaser*** shall pay rollback taxes assessed.....
initialed by the Earnhearts only; boilerplate eliminated

14. **RISK OF LOSS:** All risk of loss or damage to the Property by fire, storm ..... remains with Seller.....
boilerplate eliminated

15. **EQUIPMENT CONDITION AND INSPECTION:** Except as otherwise provided herein, Purchaser agrees to accept the Property at settlement.....
boilerplate eliminated

INITIALS: *DM LSC GE NRE*
(signed)

condition as of date of this contract. Seller agrees to deliver the Property in broomclean condition and to the exercise reasonable and ordinary care (sic) in the maintenance and upkeep of the Property between the date this Contract is executed by Seller.....

16. **WELLS AND SEPTIC:** If the Property is served by an on-site well or other natural water source or sewage disposal system or both, Seller agrees to furnish Purchaser within ***30*** days of ratification with a certificate dated not more than 10 days prior to ratification of this Contract from.....If either is found defective, Seller shall within ***30*** days repair all defects at Seller's expense....
(handwritten Earnheart changes)
initialed by the Earnhearts only; boilerplate eliminated

17. **WOOD INFESTATION INSPECTION AND REPORT:** ***30*** days after ratification Seller shall provide Purchaser a report, dated not more than 10 days.....
(handwritten Earnheart changes)
initialed by the Earnhearts only; boilerplate eliminated

18. **SELLER'S AND PURCHASER'S OPTIONS:** In the event that the total cost of fulfilling Seller's obligations set forth in para. 16 (Well and Septic) above exceeds $20,000, Seller shall have the option to.....
boilerplate eliminated

19. **VIRGINIA CONDOMINIUM ACT:** If the Property is a condominium unit the separate Virginia Condominium Act Addendum must be attached.

INITIALS *DM LSC GE NRE*
(signed)

20. **DEFAULT:** In the event of Purchaser's default under this Contract, Sellers shall be limited to the amount of Purchaser's deposit to be forfeited as liquidated damages, and not as penalty, which shall be Seller's sole and exclusive remedy. In the event of Seller's default, Purchaser's damages shall be limited to ***$200,000*** to be treated as liquidated damages, not as a penalty, which shall be Purchaser's sole.....
(***handwritten Earnheart changes***)
initialed by the Earnhearts only; boilerplate eliminated

21. **MISCELLANEOUS:** This Contract may be signed in one or more counterparts, each of which.....
(***Earnheart deleted the next line, which read***:
"PROVIDED, HOWEVER, that the provisions of para. 8 may not be modified or changed without the written consent of the Listing Broker and the Selling Broker")
The Contract may not be assigned by Purchaser.....
initialed by the Earnhearts only; boilerplate eliminated

UNLESS OTHERWISE PROVIDED, REPRESENTATIONS AND WARRANTIES MADE BY SELLER HEREIN AND ALL OTHER PROVISIONS OF THIS CONTRACT SHALL BE DEEMED MERGED INTO THE DEED DELIVERED AT SETTLEMENT AND SHALL NOT SURVIVE SETTLEMENT. Time is of the essence as to all dates and times herein.

22. STATUTORY AND OTHER DISCLOSURES:

MECHANIC'S LIEN NOTICE: (a) Virginia law (Section 43-1 et seq.).....
boilerplate eliminated

INITIALS *DM LSC GE NRE*
(signed)

23. NOTICE OF PROPERTY CONDITION DISCLAIMER OR DISCLOSURE PURSUANT TO VIRGINIA RESIDENTIAL PROPERTY DISCLOSURE ACT:
(a) Disclaimer X is ___ is not attached. (b) Disclosure is X is not __ attached.
(ATTACHMENT DOES NOT MAKE DISCLAIMER OR DISCLOSURE PART OF CONTRACT)

24. PURCHASER'S HOME INSPECTION: Purchaser may have a home inspection..... Purchaser ___ **WAIVES** **X DESIRES** a home inspection of the Property to be performed at Purchaser's expense. See attached inspection addendum. **boilerplate eliminated**

25. LEAD-BASED PAINT INSPECTION: This paragraph applies only if the Property was built prior to 1978 and is not exempt from the provisions of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 48520) and regulations promulgated pursuant thereto.
(Check as applicable): **N/A property built in 1994 boilerplate eliminated**

INITIALS *DM LSC GE NRE*
(signed)

26. NOTICE TO PURCHASER: Purchaser should exercise whatever due diligence Purchaser deems necessary with respect to information on any sexual offenders registered under Chapter 23 section 19.2-387 et seq. Of Title 19. Such information may be obtained by contacting your local police department or the Department of State Police, Central Records Exchange at (804) 574-2000 or www.state.va.us/vsp/vsp.html.

27. NOTICE TO PURCHASER REGARDING SETTLEMENT AGENT AND SETTLEMENT SERVICES:

Choice of Settlement Agent: You have the right to select a settlement agent to handle.....

Escrow, closing and settlement services guidelines: The Virginia State Bar issues guidelines to help settlement agents avoid.....
boilerplate eliminated

28. ADDITIONAL TERMS:
OTHER ITEMS: (Use this space for additional terms not covered in this Contract)
1. See attached: 1. Property Inspection Addendum 2. Addendum contingencies/clauses 3. Addendum to Contract 4. Disclaimer 5. MLS#RV5349155 6. Plat

29. ACCEPTANCE: This Contract, when signed by Purchaser, shall be deemed an offer and shall remain in effect until 6 o'clock P.M.E.S.T. April 1, 2006. If this offer is not accepted by Seller within that time by delivery of a signed acceptance to the

INITIALS *DM LSC GE NRE*
(signed)

Purchaser, or the Broker or agent for Purchaser, it shall be deemed withdrawn. WITNESS the following duly authorized signatures and seals:
Seller accepts this offer ***as modified and changed, IF AGREED TO:*** **(handwritten changes by Earnheart)** this 1st day of April, 2006 at 3:30 o'clock P.M. E.S.T.

4/01/06 ***GSEarnheart*** 3/31/06 ***D. Marro*** (signed) (SEAL)
DATE SELLER DATE PURCHASER

SOCIAL SECURITY NO.

4/1/06 ***NREarnheart*** 3/31/06 ***L. Clancy*** (signed) (SEAL)
DATE SELLER DATE PURCHASER

SOCIAL SECURITY NO.

332 HUNTERS ROAD
WASHINGTON, VA 22747
HOME NUMBER:
WORK NUMBER:
FAX NUMBER:

2082 Winchester Rd
Delaplane, VA 20144
HOME NUMBER:
WORK NUMBER:
FAX NUMBER:

Listing or Seller Broker executes this Contract for the purpose of acknowledging receipt of Deposit.

____/____(SEAL) ____/____(SEAL)
DATE BROKER or AGENT DATE BROKER or AGENT

ADDRESS:

WORK NUMBER:
FAX NUMBER:
BROKER CODE:

ADDRESS:
Post Office Box 500
Middleburg, Virginia 20118
WORK NUMBER: 540-687-6500
FAX NUMBER: 540-687-8899
BROKER CODE: TATI

THOMAS AND TALBOT REAL ESTATE
PROPERTY INSPECTION ADDENDUM

This ADDENDUM, which is attached to and made a part of a Contract dated April 1, 2006 between Donald c. Marro and Lillian S. Clancy (Purchaser) and Gregory S. Earnheart and Nancy R. Earnheart (Seller).

Property known as 40.681 acres more or less, Tax Map #29—79 More commonly known as: 332 Hunters Road, Washington, VA.

Provides: This contract is expressly contingent for 5 business days following ratification of this contract upon a complete property inspection, the cost of which shall be paid by Purchaser and the results of which shall be to Purchasers' sole satisfaction. If this contingency is not expressly removed by Purchaser or Purchaser's Agent within said 5 business day period, then this contingency shall be deemed satisfied and removed and this contract shall be in full force and effect. If Purchaser decides that the results of the Inspections are not to their sole satisfaction within the same 5 business days period they may elect, at their option, to void this contract, and their Deposit shall be returned and all liability between the parties hereto shall cease.

WITNESS the following duly authorized signatures and seals

GSEarnheart 04/01/06 Donald Marro 3/31/06 (signed)
Seller Date Purchaser Date
NREarnheart 04/01/06 Lillian Clancy 3/31/06 (signed)
Seller Date Purchaser Date

CONTINGENCIES/CLAUSES ADDENDUM TO CONTRACT

This Addendum is made on March, 2006 to a Sales Contract ("Contract") dated_____, 19____ between Donald C. Marro and Lillian S. Clancy) Purchasers, and Gregory S. Earnheart and Nancy R. Earnheart ("Sellers") for the purchase and sale of the Property: 332 Hunters Road Washington, VA
The following provisions if initialed by the parties are incorporated into and made a part of this Contract:
1. **CONTINGENCIES.** This Contract is contingent upon satisfaction of contingencies...**boilerplate eliminated**

A. HOME INSPECTION. This Contract is contingent until SEE ADDENDUM 5 business days after Ratification Date upon inspection..... **boilerplate eliminated**

B. RADON TESTING. This Contract is contingent until 10 business days after Ratification Date upon Purchaser... **boilerplate eliminated**

C. SALE OF PURCHASER'S PROPERTY AND KICK-OUT. ..... ***this section not applicable***
boilerplate thereof eliminated

CHANGES NOT ACCEPTABLE TO SELLERS. A COPY OF ANY INSPECTION REPORT REQUIRING REPAIR OF DEFICIENCIES IS SPECIFICALLY REQUIRED BY SELLER AS CONDITION OF SALE.
(handwritten additions by Earnheart)
initialed by the Earnhearts only

INITIALS *DM LSC GE NRE*
(signed)

D. CONTINGENT ON SELLER HOME PURCHASE. ***this section not applicable;* boilerplate eliminated**

E. PRELIMINARY FINANCING CONTINGENCY. This Contract is contingent until X 9 p.m. on ***Tuesday April 4, 2006,*** upon the Purchaser Delivering to the Seller a pre-qualification letter from a U.S. institutional lender .....**(*handwritten additions by Earnheart*; boilerplate eliminated) (initialed by the Earnhearts only)**

F. GIFT LETTER.
***this section not applicable;* boilerplate eliminated**

G. GENERAL. . This Contract is contingent until 9 p.m. on ***Tuesday, April 4, 2006***, on ***the Purchaser providing SELLER a current and valid lender letter as described in (E) above, or certification of availability of sufficient funds to satisfy the terms of this agreement without contingencies of any nature.* (*handwritten additions by Earnheart*) initialed by the Earnhearts only**

2. CLAUSES
A. BACK-UP CONTRACT OR OFFER. ***section not applicable;* boilerplate eliminated**

B. "COINCIDING" SETTLEMENTS. Settlement of this Contract is subject to the settlement of the contract for the Purchaser's property preceding the settlement of this Contract. Settlement hereunder may not be delayed more than ***10*** *days* **(Earnheart change)** or this Contract shall become void and ***all parties shall sign appropriate releases* (deleted by Earnheart) (except for changes noted, initialed by all parties)**

C. PRE-OR POST-SETTLEMENT OCCUPANCY AGREEMENT. ***section not applicable;* boilerplate eliminated**

Except as modified by this Addendum, all of the terms and provisions of this Contract are hereby expressly ratified and confirmed and shall remain in full force and effect.

WITNESS OUR SIGNATURES AND SEALS:

SELLER:	PURCHASER:
04/01/06 GSEarnheart	3/31/06 DMarro (signed)
Date Signature	Date Signature
04/01/06 NREarnheart	3/31/06 LSClancy (signed)
Date Signature	Date Signature

NOTE: THIS CONCLUDES PAGE 2 OF THIS FORM,
(continued from the previous page)

Thomas and Talbot Real Estate Middleburg, Virginia
ADDENDUM TO CONTRACT OF PURCHASE #1 OF 1

This ADDENDUM is ...made part of a Contract dated March 31, 2006, between Donald Marro and Lillian Clancy (Purchaser) and Gregory S. and Nancy R. Earnheart (Seller) for sale of real property and improvements... described in the Contract as.....
Provides: Seller acknowledges Purchaser will make simultaneous offers to purchase other properties. Purchaser intends to purchase only one (1) property, therefore, the parties hereto agree that the first offer of Purchaser ratified by any seller will cause all other offers to be immediately and automatically withdrawn, and Deposits therefore shall be immediately returned. Whichever offer is ratified earliest shall be the only contract which purchaser shall be liable to perform, and Seller expressly understands and agrees to this provision. *Any ties will be decided by Purchaser.* **boilerplate removed**

Notwithstanding the foregoing paragraph, this offer, when signed by Purchaser, shall be deemed an offer and shall remain in effect until 6 o'clock p.m. on April 1, 2006, unless earlier withdrawn. If this offer is not accepted by Seller within that time by delivery of a signed acceptance to the purchaser or Purchaser's Broker or Agent, it shall be deemed withdrawn.

WITNESS the following duly authorized signatures:

GS Earnheart	*4/01/06*	*Donald Marro*	*3/31/06 (signed)*
Seller	Date	Purchaser	Date
NR Earnheart			
4/01/06	*3:30 P.M.*	*(signed) Lillian S. Clancy*	
Accepted	Date/Time	Purchaser	Date

RESIDENTIAL PROPERTY DISCLAIMER STATEMENT
NOTICE TO SELLER AND PURCHASER

The Virginia Residential Property Disclosure Act requires owners….. **boilerplate removed**

RESIDENTIAL PROPERTY DISCLAIMER STATEMENT

NOTE TO OWNERS(S): Sign this statement only if you elect to sell the property without representation and warranties as to its conditions, except as otherwise provided in the purchase contract; otherwise, complete and sign the RESIDENTIAL PROPERTY DISCLOSURE STATEMENT.

1. Property Address: 40.681 acres, more or less, Tax Map#29---70 more commonly known as : 332 Hunters Road, Washington, VA

The undersigned owner(s) of real property described above make no representation or warranties as to the condition of the real property…. **boilerplate removed**

(signed) G Earnheart 04/01/06 NR Earnheart 04/01/06
Owner Date Owner Date

NOTE TO PURCHASER(S): The owner(s) make no representations with respect… . **boilerplate removed**

(signed) D Marro 3/31/06 Lillian Clancy 3/31/06
Purchaser Date Purchaser Date

VIRGINIA:
IN THE CIRCUIT COURT OF RAPPAHANNOCK COUNTY

DONALD C. MARRO,

Plaintiff

v. CASE NO.: CL06-029

GREGORY EARNHEART, et al,

Defendants

ORDER

THIS CASE came on the 5th day of October, 2006 for argument on (1) the Demurrer filed by Defendants, Gregory Earnheart and Nancy Earnheart, and (2) the Demurrer of the Defendants NRT Mid-Atlantic, Inc. and Candice Bower.

The parties, Gregory and Nancy Earnheart, appeared by their counsel, Douglas K. Baumgardner, Defendant NRT Mid-Atlantic, Inc. and Candice Bower appeared by their counsel, Robert C. Gill. Donald C. Marro, the pro-se Plaintiff, appeared in person.

For the reasons set for in the record of these proceedings, including those set out in the briefs filed by the Defendants, the Court finds that the Demurrers should be sustained as to all counts of the First Amended Complaint and that this case should be dismissed with prejudice.

Accordingly, the Complaint is hereby dismissed with prejudice, however, this case shall remain on the docket for the sole purpose of hearing the Motion(s) for Sanctions. And this cause is, as to the Motion for Sanctions, continued.

ENTER: This 21 day of December, 2006.

(signed) J. W. Parker
JUDGE

SEEN:

(signed) Robert C. Gill
Robert Gill (VSB #26266), Shannon Bates (VSB #46647)
Saul Ewing LLP
Counsel for Coldwell Banker and Candice Bower
1025 Thomas Jefferson Street, NW, Suite 425W
Washington, DC 20007
Telephone: 202-295-6600, Facsimile: 202-295-6700

SEEN:

(signed) Melissa L. Cripp
Douglas K. Baumgardner
Baumgardner & Brown
Counsel for Gregory and Nancy Earnheart
211A Main Street, P.O. Box 270
Washington, Virginia 22747-0270
Telephone: 540-675-3617, Facsimile: 540-675-3225
Virginia State Bar No. 15989/42695

SEEN AND OBJECTED TO:

(signed) Donald C. Marro
Donald C. Marro
Pro Se Plaintiff
3318 Bust Head Road
The Plains, Virginia 20198
Telephone: 540-253-5309, Facsimile: 540-253-5307

VIRGINIA:
IN THE CIRCUIT COURT OF RAPPAHANNOCK COUNTY

DONALD C. MARRO,
Plaintiff
v. CASE NO.: CL06-029
GREGORY EARNHEART, et al,
Defendants

ORDER

THIS CASE came on this 21st day of December, 2006 for entry of an Order.

The Court, having sustained the Demurrers heretofore filed, notes that the Earnhearts have filed their motion requesting leave to file an amended motion for sanctions. Coldwell Banker and Candice Bower shall have until Jan. 5, 2007 to file their motion. The Earnheart Defendants shall have twenty-one (21) days from November 13, 2006 within which to submit such motion as they deem appropriate requesting leave to amend after which time the parties may appear for the purpose of scheduling an additional hearing.

ENTER: This 21day of December , 2006.

(signed) J. W. Parker
JUDGE

SEEN:
(signed) Robert C. Gill
Robert Gill (VSB #26266), Shannon Bates (VSB #46647)
Counsel for Coldwell Banker and Candice Bower
2600 Virginia Avenue, NW, Suite 1000
Washington, DC 20037
Telephone: 202-295-6600, Facsimile: 202-295-6700

SEEN:

(signed) Melissa Cripp
Douglas K. Baumgardner
Baumgardner & Brown
Counsel for Gregory and Nancy Earnheart
211A Main Street, P.O. Box 270
Washington, Virginia 22747-0270
Telephone: 540-675-3617, Facsimile: 540-675-3225
Virginia State Bar No. 15989/42695

SEEN AND OBJECTED TO:

(signed) Donald C. Marro
Donald C. Marro
Pro Se Plaintiff
3318 Bust Head Road
The Plains, Virginia 20198
Telephone: 540-253-5309, Facsimile: 540-253-5307

VIRGINIA:
IN THE CIRCUIT COURT OF RAPPAHANNOCK COUNTY

DONALD C. Marro, Plaintiff
v. CASE NO.: CL06-029
GREGORY EARNHEART, et al, Defendants

ORDER

THIS CASE came on the 5th day of October, 2006 for argument on (1) the Demurrer filed by Defendants, Gregory and Nancy Earnheart, and (2) the Demurrer of Defendants NRT Mid-Atlantic and Candice Bower.

The parties, Gregory Earnheart and Nancy Earnheart, appeared by their counsel, Douglas K. Baumgardner, Defendant NRT mid-Atlantic, Inc. and Candice Bower appeared by their counsel, Robert C. Gill. Donald C. Marro, the pro-se Plaintiff, appeared in person.

For reasons set forth in the record of the proceedings, including those set out in the briefs filed by Defendants, the Court finds the Demurrers should be sustained as to all counts of the First Amended complaint and that this case should be dismissed with prejudice.

Accordingly, the complaint is dismissed with prejudice; however, this case shall remain on the docket for the sole purpose of hearing the Sanctions Motion heretofore filed by the Earnheart Defendants Earnheart. The Defendants may file such pleadings, to include a Bill of Particulars and Amplified Motion in the case of the Earnhearts, and a Motion for Sanctions on the part of NRT Mid-Atlantic, Inc. and Candice Bower, within 21 days next following the date of entry of this Order.

As to each Defendant, Marro shall file his response within 21 days next following the date Defendants pleadings are filed.

And this cause is, as to the Motion for Sanctions, continued.

ENTER: This ____ day of _____, 2006.

_____(unsigned)_____
JUDGE

SEEN:
_____(unsigned)_____
Robert Gill (VSB #26266), Shannon Bates (VSB #46647)
Saul Ewing LLP
Counsel for Coldwell Banker and Candice Bower
1025 Thomas Jefferson Street, NW, Suite 425W
Washington, DC 20007
Telephone: 202-295-6600, Facsimile: 202-295-6700

SEEN:
_____(unsigned)_____
Douglas K. Baumgardner (VSB #15989)
Baumgardner & Brown
Counsel for Gregory and Nancy Earnheart
211A Main Street, P.O. Box 270
Washington, Virginia 22747-0270
Telephone: 540-675-3617, Facsimile: 540-675-3225

SEEN AND OBJECTED TO:
_____(unsigned)_____
Donald C. Marro
Pro Se Plaintiff
3318 Bust Head Road
The Plains, Virginia 20198
Telephone: 540-253-5309, Facsimile: 540-253-5307

VIRGINIA:
IN THE CIRCUIT COURT OF RAPPAHANNOCK COUNTY

DONALD C. MARRO, Plaintiff	)	
v.	)	CL06-029
GREGORY EARNHEART et al Defendants	)	

Washington, Virginia

Thursday, October 5, 2006

A hearing in the above-styled matter before the Hon. Jeffrey W. Parker, Judge of the Circuit Court of Rappahannock County, 250 Gay Street, Washington, Virginia, on the 5th day of October, 2006, set for time 10:00 a.m., when there were present on behalf of the respective parties:

A-P-P-E-A-R-A-N-C-E-S

On Behalf of the Plaintiff:

The Plaintiff appeared pro se.

PAGES 2 - 44 OF THIS HEARING TRANSCRIPT ELIMINATED

ONLY THE TRIAL COURT'S RULING IS INCLUDED HERE

THAT FOLLOWS

THE COURT: Thank you, Mr. Marro. I think the Court's in a position to go ahead and rule on this, gentlemen. And I have examined your briefs. They've been very thorough. I want to compliment everyone here in terms of their presentation of this matter. It's always of great assistance to the Court when these matters are thoroughly briefed and argued to try to reach the best decision possible.

I've heard Judge Robertson say good judging comes from good lawyering and, of course, he was the predecessor judge here on the bench, and I think Judge Robertson's statements were very, very correct. He is very astute, and I try to track that to the extent I can. I can't say that I'm always, perhaps, guilty, or maybe I have the benefit of good judging, or that I always do that, but I try to do the best I can.

As far as the Statute of Frauds is concerned, I think I've indicated my position. I see from my review -- and I wanted to confirm my belief here – that the writing was the writing attached to the pleadings. This Court does not believe it can be subdivided. I think it has to be construed as a whole. There's nothing to suggest that it was not done simultaneously.

As Counsel explained, it's a rejection of the initial offer and a counteroffer. That goes back to first-year law school and I don't think those principles changed. If they've changed, then I guess I'm going to be educated at a later point in time. I'm going to go back to the Count II, which is the 59.1-200 violation. That is the Consumer Protection Act. There's two bases for challenging this from the defendants' standpoint.

One is federal preemption. I inquired as to whether or not the case was decided, the federal case which was cited, which was dispositive in the Court's view on that subject, had been perhaps reversed or otherwise changed, and I was advised it had not. I think that would be sufficient in and of itself to defeat this claim.

But furthermore, I think what's significant is that it states "that the defendants had no intention to sell the land separately as represented." Well, the attachments really are not consistent with that. The statement is, again, basically, in 3.A -- 3.A talks about the parties being willing to sell for the listed price. That's what was represented, in this Court's view.

"No intention to sell the property separately as represented." Well, they said they would. We have a list. We have a price. This Court does not believe facts pled, based on the attachments, are consistent with that representation. The Court can consider those in ruling on demurrer, and consistent with the -- again, we have the preemption argument, we have that factual statement and therefore, the Court will sustain.

I'm going to sustain this. Count 1 in the demurrer is being sustained with prejudice. I believe there's been an opportunity to replead, and this is the material the Court's received. Count number II will also be sustained with prejudice.

As to actual fraud, what we have here is "knowingly advertise or cause the property to be advertised when actually the owners had no intention to sell the property as it was advertised." Again, I've observed that the statement made in the paragraph was consistent with the advertisement.

Therefore, I think that there's been no misprepresentation of material facts, misrepresentation of material facts either knowingly made or inadvertently made under Counts III and IV, and, therefore, the Court will sustain the demurrer on those matters.

In terms of tortious interference with a prospective contract, the agency was between the realtor and the seller. He had the right to advise his client. There was nothing to suggest in terms of factual representations that there was a malicious attempt to dishonor an accepted offer which was never accepted based on the evidence this Court has. Therefore, the Court will sustain the demurrer in reference to Count V.

And as far as broker malpractice is concerned, again, I don't believe there was privity of contract, there's any duty owing. I think the economic loss rule applies. There's a number of reasons why I think broker malpractice is not applicable. Therefore, the Court will sustain the demurrer in reference to Count VI.

I'm going to sustain all these demurrers with prejudice because I believe the opportunity to amend has been provided. I think these cases have been examined thoroughly. I see nothing at this point in time to suggest that anything futher could be presented which would assist this Court or the plaintiff in resolving this matter further, and I think this litigation needs to come to a termination point. Therefore, the Court will sustain the demurrers accordingly. I will note the exception of Mr. Marro in this matter.

MR. MARRO: Thank you, Your Honor.

THE COURT: And I will ask the defendants to prepare the appropriate order.

MR. GILL: Yes, sir, Your Honor. Thank you very much.

THE COURT: Thank you very much. Court stands in recess.

[Whereupon, the proceedings were adjourned at 11:18 a.m.]

VIRGINIA:
IN THE CIRCUIT COURT OF RAPPAHANNOCK COUNTY

DONALD C. MARRO	)	
PLAINTIFF	)	
V.	)	CL06-029
	)	
GREGORY EARNHEART ET AL	)	
DEFENDANTS	)	

Motion To Recuse

Pro se plaintiff moves to recuse Judge Parker.

1. There appears from a published opinion by Judge Parker in an unrelated matter and from the rulings herein that plaintiff is unlikely to be heard without bias and prejudice, as follows.

2. A January 8, 2007, written opinion of Judge Parker as to the amount of sanctions to be granted in this unrelated matter (the sanctions themselves already having been awarded) described plaintiff herein as a "vexatious litigant". (opinion attached)

3. Further, this basis for that description was elaborated on p. 2, paras. 5- 7 of that opinion as follows:

"Both the 2001 and 2003 lawsuits...were the subject of numerous, if not vexatious (sic) motions praeciped by Mr. Marro, which should have been resolved without the necessity of court appearance.
...it is worth noting that no other litigant in this Court'sexperience has appeared so consistentlyon this Court's docket over matters which are ordinarily resolved out of Court.

Although prevailing on the merits of litigation alone does not justify sanctions, vexatious litigation reflected by repeated Court filings, with no relative probability of success, seeking damages of a minimal or indeterminable amount, compel a response by this Court in order to deter similar actions in the future."

4. Suit by plaintiff, pending or future, thus is suspect in the view of Judge Parker, particularly where, as here, the issue is not straightforward, a frequent eventuality in the law.

5. The court's rulings herein add support. The Court relied on the Earnhearts' counsel use of an entirely inapposite case on a mere (and uncertain)*1 assurance the case was Shephardized. The Court refused to furnish a record to the Supreme Court and made plain its belief *pro se* plaintiff did not properly comprehend the law and rules (3/12/07 HT p. 10-11, 17-19). This Court let defendants vilify and demonize plaintiff (most recently, 3/12/07 HT p. 7-8), and let defendants go outside the pleadings (record, at pps. 167-80), but will not let plaintiff put on evidence to support the reasonable basis test for the Complaint.

WHEREFORE, plaintiff moves to recuse.

Respectfully submitted,

Dated: April 30, 2007 by: (signed) Donald C. Marro
Donald C. Marro, *pro se*

---

1. The Court: "Was the case Shephardized?"
Mr. Baumgardner. "I believe we did. I think so."
(10/5/06 hearing transcript ["HT"] at p. 7,

TWENTIETH JUDICIAL CIRCUIT OF VIRGINIA

BURKE F. MCCAHILL
POST OFFICE BOX 9
LEESBURG, VA 20178

JEFFERY W. PARKER, JUDGE
40 CULPEPER STREET
WARRENTON, VA 20186

June 22, 2007

Mr. Donald Marro
2082 Winchester Rd.
Delaplane, VA 20144

Robert C. Gill, Esq.
Shannon H. Bates, Esq.
Saul Ewing LLP
2600 Virginia Ave, NW, #1000
Washington, DC 20037

Douglas K. Baumgardner, Esq.
Baumgardner & Brown
211 A. Main Street, P. O. Box 270
Washington, VA 22747

Re: Marro v. Earnheart/ Rappahannock Circuit Court
Law No: CL06-029

Gentlemen:

This matter comes before the Court for a decision on the sole remaining issue before this Court, which are Motions for Sanctions which have been filed against the Plaintiff by the Defendants in this case. An initial Motion for Sanctions was filed by Defendants, Earnhearts, and subsequently a Motion for Sanctions was filed by Defendants, NRT Mid Atlantic, Inc. and Candice Bower.*1

This case was initiated by Plaintiff, Donald C. Marro, pro se by the filing of a Motion for Judgment on May 17, 2006 in the Circuit Court of Rappahannock County. Mr Marro filed a six count pleading alleging breach of contract, violation of Va. Code 59.1-200 (Virginia Consumer Protection Act), actual fraud, constructive fraud, tortious interference with contract and broker malpractice. The Defendants demurred to all Counts and filed special Pleas in Bar and Pleas to the Statute of Frauds.

By Order entered September 22, 2006, this Court sustained Defendants' Demurrer to all Counts, except Count II, which was continued generally, and provided the Plaintiff the opportunity to replead. The Plaintiff subsequently repled all of his counts, which were again demurred to, and this time sustained with prejudice. However, the Court at that time deferred entering a final ruling in the case until the previously filed Motions for sanctions could be heard.

---

*1 Defendants Earnheart first filed their Motion for Sanctions on 6/15/07, alleging abuse of process and bad faith. On 11/30/06, after the Demurrer of the First amended Complaint had been filed, but prior to the entry of the Order sustaining the Demurrers with prejudice, Defendant Earnheart moved to amplify the Motion for Sanctions. On 1/5/07 Defendants NRT (Coldwell Banker) and Mrs. Bower filed a Motion for Sanctions. Mr. Marro objected to timeliness and the reference by the Defendants to numerous other lawsuits filed by the Plaintiff.

Despite this ruling, the Plaintiff filed an interlocutory appeal without permission of the Court, which ultimately caused a substantial portion of the Court's record to be transmitted to the Supreme Court, while this remaining Motion was pending. *2

Although this Court has not received an official order from the Supreme Court, it has been advised at the time of this writing, that the Plaintiff's Appeal has been dismissed.

The substance of this case centers around actions of the Earnheart Defendants and their Real Estate Broker who listed two separate parcels of land for sale, one of which was improved, containing 40 acres, and the other unimproved, consisting of approximately 26 acres (adjoining the improved parcel).

Plaintiff, Donald Marro, and his Wife along with their Broker had responded to the sale listing and met with the Sellers and their Broker at the residence. The improved parcel alone was listed for sale at $2.5 million and the improved parcel with the adjoining unimproved 26 acres were also listed for sale at $2.95 million.

At the meeting Mr. Marro made a verbal offer (Para. 13, Amended Complaint) to buy the house and 40 acres for $2.25 million. The Defendant, Gregory Earnheart, "accepted the offer." (ibid, Para. 14).

It is not stated in the first pleading (Motion for Judgment) how the Earnhearts 'accepted' the offer. The Amended Complaint provides that they "accepted the offer in writing..."

At the time of the only meeting between the parties, they discussed the adjoining 26 acre parcel and the possibility of negotiating a sale for this piece. (Para. 16, Amended Complaint). On the date of their meeting Mr. Marro sent an offer of purchase on a standard real estate contract form to the Sellers. (Para. 17, Amended Complaint).

All of the foregoing statements contained in the Amended Complaint, along with the copy of the proposed written contract (attachment to the Amended Complaint) and the listing agreement (attachment to the Motion for Judgment), constitute the sole source of factual information upon which this Court will base its ruling.

With the exception of Paragraph 18 of the Amended Complaint, there has been no disagreement between the parties as to their interpretation of the allegations contained in the Complaint. However, Paragraph 18 of the Amended Complaint sets forth the Plaintiff's alleged factual basis for this lawsuit, and is the salient legal issue pending between these parties:

The Court stated it would consider Sanctions Motions filed by both parties pursuant to Va Code 8.01 -271.1. This Court holds objection to timeliness of Sanctions Motions is not a valid objection, as they were made before the Court entered its Final Order in this case. See Williamsburg Peking v. Kong, 270 Va 350 (2005).

*2 The Plaintiff alleged this Court lost jurisdiction when it sustained Demurrers with prejudice on December 18, 2006. This is incorrect. The Motion for Sanctions was continued expressly by the Court by Order entered on December 21, 2006.

> The Earnhearts accepted the offer in writing(2) but tried to switch Mr. Marro to the second property...The Earnhearts now agreed to the property purchase of 2.25 million only if it were subsumed in a total price of 2.85 milliion....
>
> ---
>
> (2) Neither the Earnhearts' nor CBRB furnished these documents to support the Earnhearts' plea inbar (sic) or the CBRB subpoena duces tecum. *They are, however, attached for the Court.* (Emphasis added.)

DISCUSSION

It is evident from the overall content of the Plaintiff's pleading and the documents attached thereto, that the only written document memorializing the alleged contract is the counteroffer from the Earnhearts to Mr. Marro. Mr. Marro stridently took issue with the characterization of this writing as a "counteroffer." He argues that the Court went outside of the pleadings by not accepting his characterization of the document as a written acceptance of his offer.

While a demurrer admits the truth of all properly pleaded facts, it does not admit the correctness of a pleader's conclusions of law. Ward's Equipment Inc. v. New Holland No. America , 254 Va. 379, 382 (1997).

Simply put, there was no independent acceptance of Mr. Marro's offer in writing by the Defendants. There was no separate memorandum or document evidencing the alleged "oral contract" or purporting to memorialize any such agreement.

The only writing attached to the pleading was the standard real estate contract, which constituted a counteroffer when altered and endorsed by the Sellers and tendered to the Buyer. "[A] court considering a demurrer may ignore a party's factual allegations contradicted by the terms of authentic, unambiguous documents that properly are part of the pleading." Id.

It is clear form the Plaintiff's own pleading that there was no written memorandum showing acceptance of the offer as required by the Statute of Frauds. The only facts as alleged in both the first and the second pleading relevant to this question indicate a verbal discussion between the parties as to Mr. Marro's intent to purchase the property for an amount less than the listing set forth in the multiple listing service.

While the parties at their only meeting verbally agreed on the price, there is no suggestion that they orally agreed on all the terms as contained in Mr. Marro's written offer. But irrespective of that, the alleged oral contract could not be consummated under the law of this Commonwealth until it was memorialized in compliance with the Statute of Frauds, Va. Code 11-1 (1950 as amended). This was simply not done, as evidenced by the attachments incorporated in the pleading.*3

---

*3 Mr. Marro also assumes agency by Mr. Earnheart on behalf of his Wife. The Court is not addressing the lack of detail in the pleading in asserting this position. The Court finds the Statute of Frauds defense to be sufficiently fatal so as to obviate the necessity for ruling on this issue.

Mr. Marro cannot designate a writing prepared solely by him as an initial offer, as a writing satisfying the Statute of Frauds. An offer does not become a contract until it is accepted and "a proposal to accept, upon terms varying from those offered is a rejection of the offer" Crews v. Sullivan, 133 Va. 478, 483 (1972).

At the time argument was heard on the first Demurrer (to the original pleading), there was extensive discussion as to relevant case law and the application of the Statute of Frauds to the facts herein. This Court in its comments indicated its position that a written memorandum complying with requirements of the Statute of Frauds would need to be produced in order for this matter to go forward. (Transcript 7/21/06, p. 65) Mr. Marro during his argument affirmatively represented that he had such a memorandum, as follows:

> The fact of the matter is there were not three paths that were taken to avoid the Statute of Frauds, there were two: the first of which is a memorandum that was prepared by Candice Bower and the Earnheart Defendants ...I have a copy of that and I'm not going to attempt to enter it into evidence, because this is a demurrer hearing. But I would point out to the Court that any need to amend the Complaint to recognize the amendment would be in the vernacular, a piece of cake. (Emphasis added.) (T. 7/21/06, p. 37-38).

The Court, in ruling on this matter, stated "an oral contract was not within the Statute of Frauds and something else must be alleged." T, p. 65.

The Court gave Mr. Marro the opportunity to attach this memorandum to his Amended Pleading (T. 7/21/06, p. 66) and he assented to this and chose to replead. In reliance upon the representation that Mr. Marro had a written document, the Court authorized Mr. Marro to replead his action. In the Amended Complaint, there was no such separate memorandum attached, but only a counter offer which in the previous pleading was claimed by Plaintiff to be evidence of the Earnheart's acceptance of his initial offer. (Motion for Judgment, p. 12,13).

The Plaintiff in his Motion opposing sanctions stated "[i]f there was an oral agreement, and there was, that ...would bind sellers to sell what was offered...and a writing memorializing that oral agreement would take it from the statute of frauds..." (Plaintiff's Opposition to Defendant's sanctions motions, P. 3) Thus, the Plaintiff conceded in his argument that a writing is required to defeat a Statute of Frauds defense.

In considering whether a litigant violated Va. Code 8.01-271.1, the Court must apply an objective standard of reasonableness. Nedrich v. Jones, 245 Va 465, 470 (1993). The Court must further determine whether after a reasonable inquiry, the litigants could have formed a reasonable belief that the Motion for Judgment was warranted by existing law. Id.

In briefing and arguing the Motions for Sanctions, Defendants identified numerous other cases filed by Plaintiff in this Jurisdiction, suggesting that Mr. Marro is overly litigious, and further harbors an ulterior motive in bringing this lawsuit. Mr. Marro objected to any references outside of the lawsuit.

He further insisted that if the Court were to consider such matters, he should be permitted to enter all of these previously litigated cases into evidence, and then take new depositions and subpoena witnesses in order to demonstrate the merits of his previous cases.

This Court declined to proceed in this manner, finding that such an undertaking would severely tax the resources of this Court, and would distract it from consideration of the cause of action which was the initial basis for this proceeding.

Notwithstanding whether or not this Court could or should consider in detail such evidence in order to determine whether or not Mr. Marro is a litigious or "vexatious litigant",*4 this Court does not feel that such an evaluation is necessary or even relevant to the issue before it. This Court would observe Mr. Marro has appeared before it on numerous occasions as a pro se Plaintiff against various unrelated litigants on dozens of motions and court proceedings. As a result, this Court for purposes of this proceeding and this Motion takes judicial notice of the fact that Mr. Marro, although not possessing a law degree is highly intelligent and has spent countless hours teaching himself the law and the procedure necessary to navigate the complex process governing the Circuit Court.

---

*4 The term "vexatious" was cited by the Defendants in paraphrasing this Court's letter in Marro v. Virginia Electric & Power Co. CL05-157, dated 1/8/07. In that letter, the Court indicated that Mr. Marro had made many "vexatious motions" but never referred to him personally as "vexatious."

His actions thus must be considered from the perspective of an individual who cannot (sic) only comprehend advanced legal concepts, but has the ability to both write and verbally articulate those positions to a high degree of competency.

This observation is significant, because despite the objective standard to which this Court is held in considering a Motion brought pursuant to 8.01-271.1, the Court can clearly consider the factual and legal knowledge of the individual advancing any theory or cause of action in a given lawsuit. In the matter of Tullidge v. Board of Sup. of Augusta County, 239 Va. 611 (1990), a pro se litigant, who was also an attorney, opposed the transfer of certain administrative offices from the City to the County.

The Court in imposing sanctions observed "[b]ecause the [Plaintiff] is an attorney, it must be shown that a competent attorney, after a reasonable inquiry, could not have formed a reasonable belief that the [the Plaintiff's] (sic) contention was warranted by existing law." (Emphasis added). 239 Va. at 614.

The legal background and factual knowledge of the proponent of a pleading was recently emphasized in the matter of Ford v. Benitz, 273 Va. 242 (2007). Benitz involved a personal injury action in which defense counsel filed a number of affirmative defenses in his answer. Upon motion, the trial court struck some of the affirmative defenses and Plaintiff's counsel sought sanctions. The attorney's good faith in alleging those certain affirmative defenses was examined, not only based upon the attorney's legal knowledge and expertise, but also upon his previous experience in the case which had been previously non-suited.

Based upon previous discovery, it was clear defense counsel knew he did not have the facts necessary to support some of the defenses he alleged. "In no event may counsel [or pro se] file a pleading he knows to be unfounded in fact.." 273 at 253.

Mr. Marro, in his first pleading, stated in reference to his actual fraud Count that "this Count is plead in the alternative in the event Earnheart Defendants interpose a statute of frauds' defense."(Emphasis added). (Motion for Judgment, Paragraph 23.) Mr. Marro, even at this stage of the case anticipated the possibility, if not the probability, that the Statue of Frauds' defense would be plead and he could not claim surprise when such an argument was, in fact, made.

Despite that legal and factual knowledge, he did not attach any independent written memorandum or document to his initial pleading, which would support his claim to a real estate purchase; instead Mr. Marro asked for opportunity to replead after the first demurrer was sustained, representing to the Court that such a memorandum existed and would be attached to a subsequent pleading. Again, despite his unequivocal representation in argument, the only proposed document attached to the subsequent pleading was the counteroffer.

In Flippo v. CSC Associates, 262 Va. 48 (2001), the Plaintiff alleged fraud based upon a letter written from the Defendant to the Plaintiff. The Court ruled that the letter was nothing more than an opinion and, therefore, insufficient to support on its face a claim of fraud. The trail court was deemed to be justified in imposing sanctions on the Plaintiff for this action.

In the case at bar, this Court does not believe that the language contained in the attached counteroffer supports a reasonable belief on Mr. Marro's part that his amended pleading was based on an enforceable contract for the sale of real estate. Mr. Marro, though pro se, is more than capable of understanding application of the Statute of Frauds to the facts of this case.

Mr. Marro argued in his Opposition to Defendants' Sanctions Motion that sanctions should not be applied if they are "used to stifle advancing novel legal theories or asserting rights in a doubtful case." (P. 7) At no point in time did he suggest with any clarity that the Statute of Frauds itself was illegal or unconstitutional, or that he was some how advancing a new legal theory in the application of this Statute. His sole basis for complaint was his belief an oral offer had been accepted and Defendant had thereafter reneged. There is no basis in the law of this Commonwealth for a lawsuit to be based upon those facts.

Although this discussion has dealt with the application of the Statute of Frauds under a real estate contract, Mr. Marro also pled violation of the Virginia Consumer Protection Act, Fraud and Tortious Interference with contract. These claims also center around the contract claim*5 and have no independent legal or factual support in the Plaintiff's pleadings.

---

5 The Consumer Protection Act is Federally preempted, but this fact does not cause the Court in its review to find this Count to be sanctionable or subject to the Statute of Frauds issue. This was legitimately a question that would have been raised and no penalty will be imposed on this portion of the pleading

There is concern by the Defendants that Plaintiff's actions were intended for improper purposes to harass or cause un necessary delay or increase the cost of litigation.

Defendants further argue that Mr. Marro was using the legal process itself as a weapon, rather than seeking substantive determination of the merits of his claim.

It is observed this case took an excessive period of time considering its procedural posture to mature to the point where a decision could be made on the second demurrer. It is further observed an interlocutory appeal by Mr. Marro to the Court's ruling necessitated a detailed brief by Defendants to his appeal.

This Court indicated its displeasure over filing of an interlocutory appeal because of disruption it would necessarily cause to the orderly termination of this case where removal of the file would be required while a matter was still pending.

Mr. Marro tried to turn this issue on its head arguing that because the record was transmitted to the Supreme Court, that somehow this Court's ruling on the demurrer was now a final order and, therefore, the Court had lost jurisdiction over the Motions for Sanctions.

Nothing could be further from the truth. This Court at no time made a final ruling in this case, and further indicated its preference that transmittal of the Court's record not occur until such time as a final Order had been entered.

While this Court would observe in the vast majority of cases he filed, Mr. Marro demeaned himself properly in open Court, it cannot help but note the filings in this matter have been voluminous and pleadings patently defective. This Court is always cautious in awarding sanctions under Va. Code 8.01-271.1 as litigants and counsel must be granted access to courts and should not be penalized simply because they failed to prevail. Yet a major purpose of the sanctions section is to spare victims of frivolous claims the time, effort, and expense that are suffered as a result of vexatious litigation. Switzer v. Switzer, 273 Va. 326 (2007) at 331.

In considering this matter this Court concludes that sanctions are warranted, not for the filing of the first pleading (despite the fact that no written document was attached which would defeat the Statute of Frauds defense), but for the fact that the second pleading was filed after Mr. Marro alleged in open court he had a writing that would satisfy this requirement, when none, in fact, existed, or was attached or produced.

This, to the Court was an inexcusable misapplication of the law at best, or an outright mischaracterization of the facts at worst. In either event, Mr. Marro's actions herein are sanctionable. The continued and unnecessary expense of litigation, incurred subsequently to the Court's ruling on the first Demurer, adequately support this Court's belief that the imposition of sanctions is not only justifed, but appropriate.

Therefore, the Court will receive from counsel their attorneys' fees and affidavit for costs incurred subsequent to the Demurrer being sustained to the first Motion for Judgment, and will thereafter consider an appropriate amount of sanctions to be imposed.*6

Mr. Baumgardner is requested to prepare the appropriate order. Counsel are directed to forward to this Court records of their detailed attorneys' fees, with copies to Mr. Marro. This Court will then consider these documents as it deems appropriate.

Sincerely yours,

(signed)
Jeffrey W. Parker, Judge

JWP/mkb

---

6 This Court is not limited to attorneys fees in imposing sanctions. Vinson v. Vinson, 41 Va. App. 675, 688 (2003). These submittals are only to provide the Court a frame of reference for sanctions. This Court does not wish to invest additional time in taking evidence as to these attorney fees. If Mr. Marro objects to these Affidavits, he can note his objections as follows: Fee affidavits to be submitted within 21 days of the Order incorporating this letter opinion, written objections to these Affidavits to be submitted 21 days thereafter.

VIRGINIA:
IN THE CIRCUIT COURT OF RAPPAHANNOCK COUNTY

DONALD C. MARRO,

Plaintiff

v. CASE NO. CL06-29

GREGORY EARNHEART, *et al.*

Defendants

ORDER

This case came on the 2nd day of November 2007 upon papers formerly read and upon the affidavits submitted pursuant to the direction of this Court. Consistent with the previous orders of this Court and consistent with the Court's letter of even date, this Court awards $12,000 jointly to Defendants Gregory Earnhardt and Nancy Earnhardt payable in care of their attorney, Douglas K. Baumgardner, Esq., and the sum of $12,000 payable to Defendants NRT Mid-Atlantic, Inc. d/b/a Coldwell-Banker Residential Brokerage and Candice Bower, in care of their attorney, Robert C. Gill, Esq.

It is further ORDERED that these sums be paid by Plaintiff Donald C. Marro within thirty (30) days from entry of this order, and in the event these sums are unpaid, interest will accrue at the judgment rate of six percent (6%) until paid. Exceptions of counsel and the Plaintiff already expressed are noted by this order.

This ORDER shall constitute a judgment against the said Donald C. Marro if these sums are not paid within thirty (30) days from the date hereof, and in that event this ORDER may be docketed as such at that time unless the Clerk of this Court is otherwise advised by counsel that these sums have been paid.

This order is FINAL.

The Clerk of the Court is directed to send copies of this order to the parties at:

Donald C. Marro
3318 Bust Head Road
The Plains, VA 20198

Robert C. Gill, Esq.
Saul Ewing LLP
2600 Virginia Ave N.W., #1000
Washington, DC 20037

Douglas K. Baumgardner, Esq.
Baumgardner & Brown
211-A Main Street
Washington, VA 22747

ENTERED this 5 day of November 2007.

__(signed)_____
Jeffrey W. Parker, Judge

TWENTIETH JUDICIAL CIRCUIT OF VIRGINIA

BURKE F. McCAHILL
POST OFFICE BOX 9
LEESBURG, VA 20178

JEFFERY W. PARKER, JUDGE
40 CULPEPER STREET
WARRENTON, VA 20186

November 5, 2007

Mr. Donald Marro
3318 Bust Head Road
The Plains, VA 20198

Robert C. Gill, Esq.
Saul Ewing LLP
2600 Virginia Ave N.W., #1000
Washington, DC 20037

Douglas K. Baumgardner, Esq.
Baumgardner & Brown
211-A Main Street
Washington, VA 22747

Re: Marro v. Earnheart, *et al*
Rappahannock County Circuit Court/ CL06-29

Gentlemen:

Consistent with the Court's opinion letter of June 22, 2007, incorporated into the Court's order of September 10, 2007 and further supplemented by the Court's letter of August 31, 2007, this Court has reviewed the affidavits of Robert C. Gill, Esq. filed September 10, 2007 and Douglas K. Baumgardner, Esq. filed September 19, 2007.

Upon consideration of the respective equities, expenditures and violations previously found by this Court, this Court hereby awards sanctions in favor of the Defendants to be equally divided in the total amount of $24,000.

This sum is to be due and payable within thirty (30) days from the entry of the order confirming this finding to be henceforth entered by the Court. As this matter has languished far longer than this Court would prefer, the Court will prepare the appropriate order consistent with this letter. Exceptions of Mr. Marro and counsel to any portions of this order will be noted.

This Court would also observe that objections have previously been expressed in detail in the prior orders and letters upon which this finding has been based.

Interest will accrue if this sum is unpaid thirty (300 days from the date of entry at the judgment rate of six percent (6%).

Sincerely,

(signed)
Jeffrey W. Parker

Enclosure

JWP/cto

TWENTIETH JUDICIAL CIRCUIT
OF VIRGINIA

JEFFREY W. PARKER, JUDGE
40 CULPEPER STREET
WARRENTON, VIRGINIA 20186

January 8, 2007

Mr. Donald C. Marro
3318 Bust Head Road
The Plains, VA 20198

Christian B. Franklin, Esq.
701 Kenmore Avenue, Suite 100
Fredericksburg, VA 22401

Re: Marro v. Virginia Electric & Power Co.
Circuit Court of Fauquier County
Consolidated Cases: CL05-213 & CH05-157

Dear Mr. Marro & Mr. Franklin:

This matter comes before the Court concerning the monetary award which should be awarded Virginia Electric & Power Co. (Vepco) in this case consistent with the Court's Order of September 5, 2006.

In that Order, this Court sustained Pleas of res judicata to the damage counts of the consolidated pleading, but permitted the declaratory judgment action to continue. In addition to the plea, Counsel for Vepco has requested monetary sanctions against the Plaintiff, Donald Marro (Marro) pursuant to Va. Code Section 8.01-271.1. This Court granted that relief (to be fixed upon further hearing) in an amount equal to one half of the time billed by defense counsel to Vepco in handling the plea.

On November 30, this Court received an affidavit setting forth the billable time expended on this matter by Vepco's attorney, heard evidence in the form of oral testimony and arguments of both counsel and Mr. Marro. The Court took this matter under advisement to further review the submission of Mr. Franklin, Vepco's counsel.

Prior to setting forth its award of attorneys' fees, this Court feels that a brief review of the history of this matter is in order.

On July 27, 2001, Donald C. Marro (Marro) filed his Motion for Judgment containing eight (8) Counts against Virginia Electric & Power Company (Vepco). Two of those Counts, to wit; rent and trespass were non-suited and ultimately contained in a second lawsuit filed in November of 2003. Both of these law suits, which were heard independently, centered around a claim of damages resulting from the trimming of certain trees adjacent to a Vepco power line located on Marro's property. In its defense, Vepco claimed an easement across the property of Marro and further claimed the right to trim the adjacent trees.

Marro claimed that not only did Vepco not have an easement, but that the trimming was done negligently and without permission, and therefore, he was owed monetary damages.

Both the 2001 and the 2003 lawsuits, as well as the current lawsuits, were the subject of numerous, if not vexatious motions praeciped by Mr. Marro, which should have been resolved without the necessity of a court appearance. In CL01-227 Marro filed 47 separate praecipes and 113 pleadings. In CL03-348 Marro filed 30 praecipes and 67 pleadings. These praecipes were initially scheduled on the Court's Motion's docket and frequently required separate times to be heard in their entirety. CL05-213 & CH05-157 (ultimately consolidated) included 20 separate praecipes filed by Marro with a total of 48 separate pleadings.

While Mr. Marro does not bear all the responsibility for the extensive number of praecipes and motions filed in this matter, it is worth noting that no other litigant in the Court's experience has appeared so consistently on this Court's docket over matters which are ordinarily resolved out of Court, thereby obviating the necessity for constant adjudication. This Court must note the fact that all of Marro's filings required responses by counsel for Vepco.

Although prevailing on the merits of litigation alone does not justify sanctions, vexatious litigation reflected by repeated Court filings, with no relative probability of success, seeking damages of a minimal or indeterminable amount, compel a response by this Court to deter similar actions in the future. The first two actions failed in part, due to a lack of proof as to any recognizable monetary damage. The case at Bar suffers from the same deficiency. This court finds that the substance of these matters was litigated in the previous cases filed in 2001 and 2003. It seems that more trees have died for the purpose of providing paper during this litigation then were destroyed on Marro's property during the incident in question.

Despite this Court's stated concern over the current action, and its apparent lack of merit, the Court is awarding only 50% of Vepco's billed attorney's fees. As was noted by Marro himself and as evidenced by the pleadings, Vepco also filed a declaratory judgment action.

This was done presumably with the hope of avoiding future litigation on the subject of trimming trees around the power line. As a result, this Court felt that as there may have been some overlap or duplication not directly reflected in the billing statements, that any possible duplication should not be charged to Mr. Marro under 8.01-271.1. In reference to the actual amount submitted, the Court would observe that Mr. Marro had the opportunity to extensively examine Christopher Franklin, counsel for Vepco, on the witness stand while under oath. While a couple of the figures were questionable, it was very clear to this Court that Mr. Franklin was scrupulous in seeking to carefully identify his charges and to avoid going outside the parameters of the September 5th Order.

The Court further finds that counsel's billings were more than reasonable from his testimony and the experience this Court has had with attorneys who practice in this general area of the law. Therefore, considering the incredible volume of work which this case engendered and the large commitment of time required to see this matter to its conclusion, the court awards the sum of $8,300.00 to Virginia Electric & Power Company pursuant to 8.01-271.1 of the Code of Virginia.

The Court will direct Mr. Franklin to prepare the appropriate order, which should also be reflected as a final order in this case. This Order is to be a judgment order and will bear interest from the date of entry at the judgment rate until paid.

Sincerely yours,

/s/ Jeffrey W. Parker, Judge

JWP/mkb

A COPY TESTE: GAIL H. BARB, CLERK

BY: /s/ Nancy Heidt
Deputy Clerk
FAUQUIER COUNTY CIRCUIT COURT, VA

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday *the* 15th *day of* May, 2007.

Donald C. Marro,
Appellant,
against Record No. 070551
Circuit Court No. CL06-029
Gregory Earnheart, et al.,
Appellees.

From the Circuit Court of Rappahannock County

Finding that the order appealed from is not a final, appealable order, the Court grants appellees' motions and dismisses the petition for appeal filed in the above-styled case.

This dismissal is without prejudice to the right of the appellant to appeal a final order of the trial court.

A Copy,
Teste:

Patricia L. Harrington, Clerk
By: (signed)
Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 25th *day of* April, 2008.

Donald C. Marro,
Appellant,

against Record No. 080095
Circuit Court No. CL06000029-00

Gregory Earnheart, et al.,
Appellees.

From the Circuit Court of Rappahannock County

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of the opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,
Teste:

Patricia L. Harrington, Clerk
By: (signed)
Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 13th day of June, 2008.

Donald C. Marro Appellant,

against Record No. 080095
Circuit Court No. CL06000029-00

Gregory Earnheart, et al., Appellees:

Upon a Petition for Rehearing

On consideration of the petition of appellant to set aside the judgment rendered herein on the 25th day of April, 2008, and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,
Teste:

Patricia L. Harrington, Clerk
By: *original order signed by a deputy clerk of the Supreme Court of Virginia at the direction of the Court*

Deputy Clerk